

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**In the Matter of:**

**Implementation of the Satellite Home  
Viewer Improvement Act of 1999**

**Broadcast Signal Carriage Issues**

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**CS Docket No. 00-96**

**To: The Commission**

**EMERGENCY PETITION OF NATIONAL ASSOCIATION  
OF BROADCASTERS AND ASSOCIATION OF LOCAL  
TELEVISION STATIONS TO MODIFY OR CLARIFY RULE**

Now that the date for compliance with the carry-one-carry-all provisions of the Satellite Home Viewer Improvement Act ("SHVIA") has arrived, EchoStar Communications Corporation ("EchoStar") has announced how it will implement those provisions: by relegating "disfavored" stations to remote satellites that can be viewed only if subscribers obtain a second dish, while offering other stations on EchoStar's main satellites, which subscribers can easily view with their existing equipment.

EchoStar apparently contends that this rank discrimination is consistent with the Commission's rules, because it supposedly will offer to pay for the out-of-pocket cost of a second dish. But even if EchoStar were seriously attempting to implement such an offer -- which it manifestly is not -- requiring subscribers to obtain a second dish to obtain "disfavored" local stations would make a mockery of the carry-one-carry-all provisions of the SHVIA. As EchoStar knows, the sheer "hassle factor" of arranging for installation of additional equipment,

combined with the unwillingness (and in some cases inability) of many consumers to clutter their residences with additional hardware to obtain a modest number of additional channels, will ensure that only a small percentage of EchoStar subscribers will actually have access to the full range of local stations. The National Association of Broadcasters<sup>1/</sup> and the Association of Local Television Stations ("ALTV")<sup>2/</sup> therefore request, pursuant to 47 C.F.R. § 1.401, that the Commission quickly clarify or modify its rules to ensure that congressional intent will not be defeated through this discriminatory gambit.

**A. The Congressional Directive Against Discrimination**

As the Fourth Circuit recently explained, Congress' objective in enacting the carry-one-carry-all provisions of the SHVIA was to protect local broadcasters "from the harmful effects of satellite cherry-picking." *Satellite Broadcasting & Communications Ass'n v. FCC*, No. 01-1271, 2001 WL 1557809, at \*13 (4th Cir. Dec. 7, 2001). By preventing cherry-picking, Congress sought to achieve two goals: *first*, to "preserv[e] a multiplicity of local broadcast outlets for over-the-air viewers, those who do not subscribe to satellite or cable service," and *second*, to "prevent[] [the] grant of a statutory copyright license to satellite carriers from undermining competition in local markets for broadcast television advertising." *Id.* Over the satellite industry's strenuous protests, the courts have uniformly held that Congress' decision to structure the SHVIA compulsory license to prevent cherry-picking was legitimate and constitutional. *Id.* (affirming District Court decision upholding SHVIA carry-one-carry-all provisions).

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<sup>1/</sup> NAB is a nonprofit incorporated association that serves and represents America's radio and television broadcast stations and networks.

<sup>2/</sup> ALTV is a non-profit, incorporated association of local television stations that are not affiliated with the ABC, CBS, or NBC television networks.

As Congress and the Commission have recognized, there are many ways in which a satellite carrier might seek to discriminate against local stations that it does not wish to carry. For that reason, Congress included in the SHVIA a specific statutory provision barring discriminatory treatment of some local stations. 47 U.S.C. § 338(d). As Congress explained, the particular forms of discrimination mentioned in the Act are "illustrative of the general requirement to ensure that satellite carriers position local stations in a way that is *convenient and practically accessible for consumers*." SHVIA Conference Report, 145 Cong. Rec. H11795 (daily ed. Nov. 9, 1999) (emphasis added).

**B. The Commission's Recognition of the Inherently Discriminatory Impact of Requiring a Second Dish Only to Obtain Access to Certain Local Stations**

In crafting regulations to implement the SHVIA, the Commission considered the possibility that a satellite carrier might engage in a particularly damaging form of discrimination by placing some -- but not all -- stations on a remote satellite that could be viewed only if the subscriber acquired additional equipment, including a second dish. *See Report & Order, In Re Implementation of the Satellite Home Viewer Implementation Act of 1999 -- Broadcast Signal Carriage Issues*, ¶ 100-101, CS Docket No. 00-96 (released Nov. 30, 2000) ("Report & Order"); *Order on Reconsideration*, CS Docket No. 00-96, ¶¶ 37-41 (released Sept. 5, 2001) ("Order on Reconsideration"). The Commission's most extensive discussion of the two-dish issue appears in its Order on Reconsideration, issued after DirecTV sought reconsideration on this specific issue.

As discussed below, the language of the Commission rule that addresses this issue (Section 76.66(i)(4)) is less clear than would be desirable -- and should be immediately

clarified.<sup>3/</sup> What the Commission *intended* to do, however, is clear from its Orders: it sought to prevent satellite carriers from forcing customers to *acquire* a second dish solely to obtain some local stations, without regard to who pays the out-of-pocket costs of doing so.

In its Order on Reconsideration, for example, the Commission said that it "believe[s] that a limited prohibition on requiring subscribers to *obtain* a separate dish to receive some local signals when other signals are available without the separate dish is necessary to give full effect to the local station carriage requirements." Order on Reconsideration, ¶ 41 (emphasis added). The Commission also ruled that satellite carriers "should [not] be permitted to require subscribers to *use* two separate dishes to receive the full package of local channels." *Id.* (emphasis added). The Commission found that SHVIA's legislative history did not support the conclusion that "Congress wanted to allow satellite carriers to *require additional dishes* if such a requirement created discriminatory effects." *Id.* (emphasis added). An appropriate prohibition on this type of discrimination, the Commission recognized, was necessary to prevent satellite carriers from "structur[ing] local station packages and [*requiring*] *separate dish[es]* . . . to discourage consumers from subscribing to certain local stations, including local noncommercial stations." *Id.* (emphasis added).

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<sup>3/</sup> 47 C.F.R. § 76.66(i)(4) provides:

Within a market, no satellite carrier shall provide local-into-local service in a manner that requires subscribers to obtain additional equipment at their own expense or for an additional carrier charge in order to obtain one or more local television broadcast signals if such equipment is not required for the receipt of other local television broadcast signals.

### C. EchoStar's Discriminatory Two-Dish Gambit

In a mid-December 2001 announcement to its retailers, EchoStar disclosed plans to do precisely what the Commission said would amount to unfair discrimination: making "popular" local stations available from its CONUS satellites (which do not require a second dish), while relegating "less popular" stations to its "wing slot" satellites located over the Atlantic (at 61.5° W.L.) or over the Pacific (at 148° W.L.). *See Satellite Bus. News*, Dec. 17, 2001 (attached as Exhibit A).<sup>4/</sup> Consumers will require a second dish to receive signals from these "less popular" stations. *See id.* EchoStar has subsequently confirmed, in a letter to NAB (copied to several members of Congress) that it plans to place some local stations "on Eastern (61.5°) and Western (148°) satellites," which will require "a second dish." Letter from Charles W. Ergen to Edward O. Fritts at 2 (Dec. 27, 2001) (Exhibit B) (hereinafter "Ergen Letter").

EchoStar seeks to justify this blatant form of discrimination by claiming that it will offer to pay at least some of the out-of-pocket costs of a second dish. (We discuss below the illusory character of that "offer.") In support of its contention that this discriminatory treatment is lawful, EchoStar apparently relies on the language of the rule that forbids a carrier from providing local-to-local service "in a manner which requires subscribers to obtain additional equipment at their own expense . . . ." 47 C.F.R. § 76.66(i)(4). The history behind this rule makes clear, however, that when the Commission wrote this language, it did *not* have in mind the scenario that EchoStar now proposes. Rather, the context makes clear what the Commission *intended* to do:

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<sup>4/</sup> EchoStar is placing at least some local stations on still other orbital slots. *See* EchoStar web site, [www.dishnetwork.com/content/programming/locals/package/index.asp?viewby=2&packid=91&sortby=1](http://www.dishnetwork.com/content/programming/locals/package/index.asp?viewby=2&packid=91&sortby=1) (visited Jan. 4, 2002) (some Philadelphia stations are offered at 129° W.L.).

to *permit* satellite carriers to require customers to pay for a second dish "at their own expense" *if all of the stations in the market were available only through a second dish.*

In the Report & Order, the Commission emphasized that it is "not prohibiting a satellite carrier from *requiring a subscriber to pay for an additional dish in order to receive all* television stations from a single market." Report & Order, ¶ 101 (emphasis added). By way of example, it explained that "DirecTV may require an additional dish to receive *all* television stations from the Baltimore market . . . ." *Id.* (emphasis added). The Commission reiterated these same points in its Order on Reconsideration (at ¶ 37), while at no point suggesting that it would ever be permissible for a satellite carrier to isolate disfavored stations on a separate dish.

Rather than set the stage for a battle about the meaning of the existing language of the Rule, the Commission should quickly revise the Rule to clarify its original intent: that satellite carriers may not segregate certain local stations on a satellite that requires subscribers to acquire additional equipment.

**D. Congress, the Courts, and the Commission Have All  
Recognized That It Is Unrealistic to Expect Consumers to  
Acquire Additional Hardware to Obtain Only Some Local Stations**

In enacting the SHVIA, Congress observed that consumers are reluctant to install extra equipment to obtain some local television stations when other local stations -- along with nonbroadcast channels such as CNN and Nickelodeon -- are available through their satellite carrier or cable system. *See* SHVIA Conference Report, 145 Cong. Rec. H11795 (daily ed. Nov. 9, 1999). Indeed, that observation about consumer behavior was one of the predicates behind the Fourth Circuit's recent decision upholding the constitutionality of the SHVIA: the Court of Appeals described the "widely shared empirical assumption" that "satellite subscribers who are able to receive local network signals via satellite will be unlikely to obtain or maintain

[additional equipment] in order to receive independent local broadcast stations." *SBCA v. FCC*, at \*17. Although the Fourth Circuit was discussing a particular type of additional equipment (an over-the-air antenna), the same principle applies to any type of additional equipment, including a second satellite dish.<sup>5/</sup>

EchoStar itself is well aware of the unattractiveness to most consumers of a two-dish option: during 1998 and 1999, it offered local stations (including the most heavily-watched stations) in several markets, but on its "wing slot" satellites requiring a second dish. EchoStar found very few takers -- because the two-dish solution was so unattractive to consumers. In its Copyright Office filing for the first half of 1999, for example, EchoStar reported that only 227 households had signed up for its two-dish package of local network stations in the Washington, D.C. area.<sup>6/</sup>

Nor would it be any answer even if a satellite carrier actually delivered on a genuine offer to pay for the out-of-pocket costs of a second satellite dish. The reason is that, even in that purely hypothetical scenario, the hassles, inconvenience, and aesthetic costs to consumers of a second dish act as a strong deterrent -- above and beyond any out-of-pocket costs. *First*, a consumer must become sufficiently educated to be aware that the option of obtaining a second dish is available. *Second*, the consumer must know enough about the programming offered on the missing stations -- which he or she has not had available up to then -- to be motivated to

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<sup>5/</sup> Congress's conviction that subscribers are reluctant to install and use additional equipment to obtain some local television stations, and that requiring the use of such equipment can be used for anticompetitive purposes, dates back at least to the 1992 Cable Act. As the Supreme Court pointed out in *Turner I*, "[m]ost subscribers . . . do not or cannot maintain antennas to receive broadcast television services . . ." *Turner Broadcasting, Inc. v. FCC*, 512 U.S. 622, 633 (1994) (quoting congressional findings).

<sup>6/</sup> See EchoStar Satellite Corporation, *Statement of Account for Secondary Transmissions by Satellite Carriers for Private Home Viewing* (filed with U.S. Copyright Office on July 27, 1999).

obtain the second dish. (By contrast, the offerings of the "favored" local stations carried on CONUS satellites will be readily visible to subscribers merely through routine channel-surfing.<sup>7/</sup>) *Third*, a consumer must contact his or her satellite carrier (and a local installer) to arrange for an installation -- including the possibility of being required to wait at home for an indefinite period for an installer to show up, of long waits on hold, or of multiple postponements of installer visits, and even of monetary penalties for failing to be home when the installer arrives.<sup>8/</sup> *Fourth*, a consumer must be willing to accept the aesthetic costs of having a second dish on his or her property -- something that many consumers will prefer to avoid. *Fifth*, for many apartment dwellers as well as many owners of detached homes, physical or legal impediments will make a second dish impractical. All of these add up to an enormous "hassle factor" that makes the two-dish option unattractive for all but the most determined subscribers.

Moreover, the idea of a satellite carrier making a real effort to install second dishes at its own expense is completely unrealistic, as EchoStar's own behavior illustrates. As of January 3, 2002, two days *after* the SHVIA deadline, EchoStar's web site reflects *no mention whatsoever* of its supposed "free offer" to install second dishes to receive additional stations. *See* [www.dishnetwork.com](http://www.dishnetwork.com) (visited Jan. 3, 2002). (As to the stations isolated on a remote satellite, EchoStar says simply: "Second Dish Required.") And when EchoStar issued a press release a few days earlier (Dec. 27, 2001) about its plans to offer additional stations starting on January 1,

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<sup>7/</sup> Under the Commission's regulations, all local stations must be offered on contiguous channels, 47 C.F.R. § 76.66(i)(1), which means that consumers who channel-surf starting at one local station will necessarily see the programming of the other local stations that are offered from the same orbital slot.

<sup>8/</sup> *See* note 12 below.



the press release likewise contained no mention whatsoever of this secret offer.<sup>9/</sup> By contrast, DirecTV aggressively advertises the steps that *its* customers need to take to obtain additional local stations -- namely, none. DirecTV's press release about its new local-to-local offerings, for example, boasts that "[n]o new equipment or additional antennae are required to receive the new local channel signals."<sup>10/</sup>

More broadly, it is plain that EchoStar views the provision of a free second dish to subscribers as a burdensome duty that it will avoid carrying out if at all possible. When it announced its "two-dish solution" to retailers in mid-December, for example, EchoStar made clear that it planned to respond only to inquiries from subscribers. *See Satellite Bus. News*, Dec. 17, 2001 (quoting EchoStar spokesman Jim DeFranco as saying that "[r]etailers should direct interested customers to EchoStar, which will schedule the installation . . ."). Although EchoStar has belatedly announced plans to send a letter to its subscribers about the "offer," *see* Ergen Letter at 2 (Exhibit B), the timing of the letter -- delayed until much too late for anyone to actually obtain a second dish by the January 1, 2002 deadline -- is telling. Indeed, as of January 3, 2001, NAB and ALTV have seen no indication that any EchoStar subscriber has actually received such a letter.<sup>11/</sup>

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<sup>9/</sup> Press Release, *EchoStar's DISH Network To Offer Additional Local TV Channels in 36 Markets* (issued Dec. 27, 2001), [www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=dish&script=410&layout=-6&item\\_id=240276](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=dish&script=410&layout=-6&item_id=240276).

<sup>10/</sup> *See* DirecTV Press Release, *More Than 200 Additional Local Channels Now Available to DIRECTV Customers in 41 Markets* (issued Dec. 27, 2001) (available at [www.directv.com](http://www.directv.com)). In addition, DirecTV provides full information on the front page of its web site about the additional stations. *See* [www.directv.com](http://www.directv.com) ("It's an exciting time to be a DIRECTV customer. We recently launched a new satellite and are now bringing you more local channels at no additional cost!") (visited Dec. 27, 2001).

<sup>11/</sup> Strikingly, the Ergen Letter refers only to the costs of *equipment*, without mentioning the costs of *installation* -- leaving open the possibility that EchoStar will "offer" to pay only for the former and not for the latter. *See* Ergen Letter (Dec. 27, 2001) at 1-2 (Tab B hereto).

EchoStar's reluctance to publicize its "free" offer is no surprise: *it has every business incentive not to implement this supposed free offer in any meaningful way.* EchoStar has announced that it will not charge any extra monthly fees to customers who obtain access to additional local channels, whether from a wing slot or otherwise. Ergen Letter at 1 (Tab B hereto). From EchoStar's point of view, therefore, providing second dishes amounts to pouring money down a drain: giving away second dishes for customers is all downside (the costs of the second dishes) and no upside (zero additional revenues). Just as water does not flow uphill, it is simply unrealistic to expect EchoStar to pour resources into a project (installation of second dishes) that does nothing but lose money for it, when EchoStar and its installers could spend their time and resources signing up *new* customers, who offer fresh profit opportunities and the opportunity to describe a growing customer base to Wall Street. Inevitably, even if they nominally have a policy of offering free second dishes, EchoStar and its installers will wear customers down through delays and run-arounds, because the last thing EchoStar wants to do is actually to install large numbers of second dishes at its own expense.

Indeed, NAB has received reports from stations indicating that EchoStar's two-dish "plan" is dysfunctional and in chaos. Customers calling EchoStar and seeking information about additional dishes are being put on hold interminably. When subscribers do get through, many consumer service representatives do not know about the supposed "plan." When subscribers call local installers, many of the installers have likewise never heard of the plan. When installers do agree to put in a second dish, they sometimes schedule the appointment many weeks in the future, with a threat to charge the customer a large fee if the customer is not present when the installer comes. And some subscribers are being told that EchoStar will provide only one

receiver capable of processing signals from the new dish even though the household has multiple receivers.<sup>12/</sup>

**E. The Commission Should Clarify Its Rules Now**

EchoStar has described the two-dish gambit as an "interim" solution, creating the impression (while carefully avoiding stating) that its reliance on the two-dish solution will be only temporary, while it waits for its first spot-beam satellite to be launched in early 2002. *See* Ergen Letter at 1. (Of course, if that were true, there would be all the more reason for EchoStar

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<sup>12/</sup> The following posting aptly captures the ordeal that many consumers can expect to go through if they try to get EchoStar to make good on its "free" offer. *See* <http://groups.google.com/groups?start=75&group=alt.db.s.echostar&selm=3C32B696.6060300%40sonic.net> (posted by Stephen Laird on Jan. 1, 2002):

"I just spent 50 minutes talking with four CSRs at Dish, trying to get an install scheduled for a second dish . . . to receive the miscellaneous SF locals (KCSM, KFSF, KMTP, KRCB, KSTS, KTEH, KTNC, and KTSF) from the 148 satellite.  
...

During the call, one CSR said the computer 'system' was not working and to call back in the morning. Rather than waiting, I immediately called again and waited. I was responded to by another CSR, 'The system is down,' and was passed off to a third via the initial 800# phone menu that asks if you speak English, want to pay your bill, add services, etc. I seemed to be getting the run around.

Another CSR answered. (Phew!) Once again, I explained my desire to get the locals, and was asked again 'Please tell me the call letters of the stations you want to get....' (The CSRs each seemed not to understand the gist of my request) .... 'Please hold.' A fourth CSR finally came on and quickly scheduled an install date. I said, 'I want a Saturday date, please.'

Knowing there was a chance the installer would not show up, I asked how much it would cost if I failed to be there when the installer arrived. I was told by the first CSR it would cost \$119. I asked if I could charge for their failure to show up. I was told I could not do that by the first CSR, but that Dish would try to reschedule at a convenient time for me. After pressing, the fourth CSR finally told me that I could charge-back (an undetermined amount of) programming in lieu of the installer's failure to show up timely. . . ."

not to invest in the substantial costs of installing second dishes that would be unnecessary after a few months.)

Even if the two-dish scheme were acceptable as an "interim" solution -- which it is not -- it could not possibly satisfy even EchoStar's crabbed reading of the Commission's rules unless it were implemented in a manner totally different than the approach EchoStar is now taking. Although monitoring "the old run-around" would be impossible for the Commission over the long run, the Commission should, during the brief interim period needed to clarify its rules, establish minimum objective criteria for any satellite carrier that purports to justify a two-dish approach by ostensibly offering to pay for a second dish. Among other things, the Commission should communicate to the DBS industry that to comply even with EchoStar's reading of the current FCC rules, (1) the offer of a free second dish must be prominently communicated both to existing customers and to new customers via the carrier's web site and otherwise, (2) any such offer must include *all* out-of-pocket costs of purchasing, installing, and hooking up the second dish and any other necessary equipment, (3) the installation must be prompt, and (4) there can be no preconditions for the offer.

And in fact, there is serious reason to doubt that EchoStar is committed to proceeding with its previous plan to launch its own spot-beam satellite to offer one-dish access to all local stations in its 35 existing local-to-local markets. Mr. Ergen's carefully-drafted letter to NAB, for example, does not rule out the possibility that EchoStar might decide:

- to consider the two-dish gambit to be an "interim" solution *not* until a spring 2002 launch of its own spot-beam satellite but for a much longer period -- namely, until (as EchoStar hopes) the merger with DirecTV is consummated;<sup>13/</sup>
- to shelve its plans for its own first spot-beam satellite, perhaps modifying the satellite to be used in other ways, on the theory that (a) if the EchoStar/DirecTV merger is approved, it can rely on DirecTV's already-launched spot-beam satellite instead of launching its own for the top 35-40 markets, and (b) if the merger is rejected, EchoStar can rely on the two-dish gambit permanently;<sup>14/</sup>
- in planning for local-to-local service in additional markets -- such as the 60 additional markets that EchoStar has said it would serve with local-to-local if the merger is approved -- to rely on the two-dish gambit as a permanent solution for those local stations that EchoStar disfavors.

Strikingly, when given the chance just this week to confirm that it planned to proceed with its original plan to use its new satellites to provide one-dish access to all local stations,

<sup>13/</sup> According to postings by EchoStar subscribers, EchoStar customer service representatives are saying that the local stations currently trapped on "wing slot" satellites will stay there even after the new satellite is launched. See, e.g., <http://groups.google.com/groups?q=alt.dbs.echostar&btnG=Search&meta=site%3Dgroups> (posted Jan. 1, 2002) (posting by Paul Fisher in thread "Local Upgrade Equipment -- the Catch") ("the CSR did say that after the spot beams are configured later in the year, *the stations on 61.5 and 148 will probably stay there, so you'll really need the extra dish forever.*") (emphasis added).

<sup>14/</sup> An EchoStar court filing just a few days ago in Los Angeles provides additional grounds for concern about whether EchoStar still intends to use its forthcoming satellite to provide one-dish access to all local stations in the markets it now serves. In that filing, an EchoStar executive, Rex Povenmire, states that EchoStar's first spot-beam satellite will not be "operational[ly] availab[le]" until "April, *at the earliest*" and describes the April date as "tenuous at best." Supplemental Declaration of Rex Povenmire in Opposition to Plaintiff's Motion for a Temporary Restraining Order, ¶ 3, *International Family Entertainment, Inc. v. EchoStar Satellite Corp.*, No. CV-01-10878 GAF (CTx) (C.D. Cal. filed Dec. 31, 2001) (emphasis added). Perhaps most strikingly, Mr. Povenmire uses this phrase: "regardless of *whether* a new satellite can be launched in April or at some later date . . . ." *Id.* (emphasis added).

EchoStar refused to do so: "EchoStar spokesman Marc Lumpkin *declined to comment* on whether the launch of [additional] satellites would prompt EchoStar to offer all local stations from its main orbital slots at 110 degrees or 119 degrees." Satellite Business News, January 4, 2002, at 1 (Exhibit C hereto) (emphasis added).

But even if -- contrary to fact -- EchoStar had made a legally binding commitment not to rely on the two-dish approach beyond a date certain in early 2002 for the 35 markets it now serves with local-to-local -- a commitment EchoStar has not made -- it would be vital for the Commission to clarify that this destructive interpretation of its rules is unacceptable.

*First*, by quickly clarifying its rules and including an early deadline for compliance,<sup>15/</sup> the Commission can ensure that EchoStar does indeed take every possible step to build and launch its first spot-beam satellite as quickly as possible to provide one-dish access to all local stations. *Second*, if the Commission were to fail to clarify its rules, **the two-dish approach using wing slot frequencies may well prove to be a permanent strategy for both DirecTV and EchoStar, whether or not the merger is approved.** DirecTV, for example, is more than 18 months away from launching its second spot-beam satellite (DirecTV 7-S),<sup>16/</sup> and could well decide -- if the Commission fails to promptly clarify its rules -- to change its plans to exploit the two-dish loophole that EchoStar has already sought to create. As for EchoStar: even if it in fact launches its first spot-beam satellite to provide one-dish access to all stations in the top 35 markets in early

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<sup>15/</sup> If a satellite carrier claims to be unable to meet that deadline because of circumstances totally beyond its control (e.g., if a satellite is damaged while being launched), it should be required to seek a formal, temporary waiver from the Commission for good cause shown.

<sup>16/</sup> Space Systems/Loral, *Space Systems/Loral Awarded Contract To Build High-Power Spot Beam Satellite For DirecTV* (issued Sept. 6, 2001), <http://www.loral.com/inthenews/010906.html> (D 7-S satellite to be launched in the second half of 2003).

2002, EchoStar could still change its plans for its *second* spot-beam satellite, which is scheduled for a later launch.

While all of these schemes might be attractive to the DBS firms, they would devastate the core principle of carry-one-carry-all: that if a DBS firm relies on the SHVIA compulsory license, it must make all eligible local stations *genuinely* available to satellite subscribers, rather than stranding certain stations in an inaccessible technological ghetto. For all of these reasons, it is crucial that the Commission clamp down on this toxic (and plainly unintended) reading of its rules before the two-dish scheme becomes embedded in the planning process of the DBS industry.

### **Conclusion**

For the reasons set forth above, the Commission should act immediately to clarify that, as the Commission stated in its Order on Reconsideration, satellite carriers should not be permitted to "require[e] subscribers to obtain a separate dish" to receive some, but not all, local channels. Order on Reconsideration, ¶ 41.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of January, 2002, I caused a copy of the foregoing  
Emergency Motion to Clarify or Modify Rule to be served by overnight mail on the following:

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